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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1814 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRENBHAI DHANESHWARBHAI VYAS

Versus

DOSHI MUKESHKUMAR-SELF&ADMN.OFFAMILY OF CHANDUBHAI B DOSHI

Appearance:
Mr.D.D.Vyas for
M/S.VYAS ASSOCIATES for Petitioners
Respondents absent though duly served

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 14/06/2001

ORAL JUDGEMENT

1. Heard learned advocate Mr.D.D.Vyas for M/s.Vyas Associates on behalf of the petitioners. The respondents are absent though duly served.

2. The petitioners have challenged the order passed by the learned Joint Civil Judge (J.D.), Vijapur, District Mehsana dated 22/11/1999 below Ex.85 in the proceedings of Regular Civil Suit No.112 of 1998 whereby the trial court has rejected the application Exh.85 of the present petitioners who are original plaintiffs of the said suit.

3. For the sake of convenience the parties are referred to as original plaintiffs and defendants respectively.

That the plaintiffs have filed the suit for perpetual injunction, restraining the defendants from causing any obstruction in the user of the road in disputed property by raising any construction or otherwise. It is alleged by the plaintiffs that defendants intend to raise illegal construction and as such application Exh.5 for temporary injunction is also filed.

Pending the proceedings of the suit, the plaintiffs moved an application Ex.85 with a prayer for a direction to produce the documents as enumerated in the application on the ground that such documents are in power, custody and possession of the defendants and despite serving a notice to produce such documents, the defendants have not produced the same.

4. The learned Judge issued notice to the other side and heard the matter on 22/11/99 and vide impugned order, rejected the application of the plaintiffs and hence, the present revision application.

5. Perusal of the impugned order suggests that the learned Judge has confused the issue while exercising the jurisdiction conferred by the provisions of Order-11, Rule-14 of the C.P.C. The learned Judge has observed in the order that plaintiffs have right to call for the production of such documents which are in the power and possession of the defendants. However, without any material facts on record has observed in para-(6) that in the opinion of the Court, such documents are in the custody of the Competent Authority and thereby it cannot be said to be in possession and power of the defendants and as such, the defendants could not be directed to produce the same. It is further observed that defendants have admitted the fact in the written statement at Ex.32 as such also the production of the documents are not necessary.

6. The learned senior counsel for the petitioners has tendered on record the written statement filed by the defendants which disclose the fact that the factum of the sale of the disputed property to the plaintiffs by the defendants is admitted, but there is no admission in respect to conditions imposed by the Competent Authority while giving N.A. permission of the disputed property. The documents claimed by the plaintiffs are material and relevant documents to decide the dispute in respect to the right of the plaintiffs in respect to the suit passage to reach the property sold by the defendant no.1 to the plaintiffs and as such, there cannot be any doubt that the order of original N.A. permission and the plan which are sanctioned by the Competent Authority would be in the possession and power of defendants who have obtained the said permission. Under the circumstances, on account of confusion in respect to actual possession of the documents, the trial Court has committed a jurisdictional error and as such, the interference of the Revisional Court is necessary to cure failure of justice.

7. On the basis of the aforesaid discussion, the impugned order dated 22/11/99 passed by the Joint Civil Judge (J.D.), Vijapur, Dist.Mehsana below Ex.85 in the proceedings of Regular Civil Suit No.112 of 1998 is hereby quashed and set aside. The respondents who are the original defendants of Regular Civil Suit No.112 of 1998 pending in the Court of Joint Civil Judge (J.D.), Vijapur, Dist.Mehsana are directed to produce the documents enumerated vide Item Nos.1, 2 and 3 in application at Ex.85 within a period of 3 (three) weeks from the date of service of this order in the said proceedings of Regular Civil Suit No.112 of 1998. Rule to that extent is made absolute. No order as to costs.

(A.K.Trivedi,J.)

(vrpanchal)*